IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3841 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BIPIN H MANEK - Petitioner(s)
Versus
MANAGING DIRECTOR & 2 - Respondent(s)

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Appearance :
MR YN OZA for Petitioner(s) : 1,
MR DEEPAK V PATEL for Respondent(s) : 1 - 2.
NOTICE SERVED for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 30/11/2007

ORAL JUDGMENT

Heard learned Counsel for the parties.

The petitioner, under article 226 of the Constitution of India has approached this Court

challenging the order dated March 3, 1995 passed by the respondent No.1 and confirmed by the appellate authority imposes penalty of stoppage of five increments with future effect, after holding inquiry into the allegation of misconduct against the petitioner.

As being contrary to the provisions of Articles 14 and 16 of the Constitution of India, the facts in brief is stated as under to set out the controversy in the matter.

The petitioner was recruited in the Corporation on November 23, 1992 as Assistant Godown Manager. The petitioner came to be promoted to the post of Senior Clerk and was posted at Jamnagar. The petitioner came to be further promoted in August, 1992 as Godown Manager and was posted at Rajkot. In October, 1993, the petitioner was transferred to Jamnagar and was posted at Jamnagar Rural Godown. The petitioner received show-cause notice on August

31, 1995 followed by order of suspension dated September 21, 1995 and the charge-sheet came to be issued on December 12, 1995. As per say of petitioner, the issuance of charge-sheet was a result of unscrupulous demand of one corporator who sent letter making wide allegations against him. The Corporation held inquiry into the charges and Inquiry Officer submitted his report to the General Manager (Administration) on July 5, 1996. The General Manager (Administration), passed the impugned order dated November 7, 1996 imposes penalty of stoppage of five increments with future effect.

Being aggrieved by the said order, the petitioner preferred an appeal as provided under the relevant Rules called Gujarat State Civil Supplies Corporation Limited (Discipline and Appeals) Rules 1984 (hereinafter referred to as the “Disciplinary Rules” for the sake of brevity), contending inter-alia that neither the Inquiry Officer nor the Disciplinary Authority

has given cogent reason for not accepting the defence put-forward by the petitioner, nor has the authority taken into consideration the attaining circumstances and the charges have taken to be proved without examining the relevant documents. The documents which were requested were not given to him. The appellate authority passed an order in Appeal No.97/14059 produced at Annexure – H at page No.147, confirming the order of Disciplinary Authority of imposes penalty of stoppage of five increments with future effect. The petitioner has challenged both these orders before this Hon'ble Court by way of this petition under Article 226 of the Constitution of India.

Miss Thula, learned Counsel appearing for the petitioner has submitted that the stoppage of five increments with future effect which lasting effect upon the petitioner's remuneration and other benefits and therefore looking to the charges and the Inquiry Officer's report, the same could be said to be not sustainable in eye

of law. Mr.Thula, has submitted that the attaining circumstances led to levelling the allegations, also have not been bear in mind while dealing with the case by the present petitioner either by the disciplinary authority or by the appellate authority. Miss Thula has submitted that the proceedings of inquiry have not been in compliance with the principle of natural justice and therefore on that ground also the orders impugned deserves to be quashed and set aside.

Miss Thula, has invited this Court's attention to the specific request made by the petitioner for demanding defence assistance to assist him during the inquiry proceedings, but the same has been turned down illegally on the ground that an outsider to be not permitted to be as defence assistance and petitioner ought to have selected someone from the department itself. Miss Thula, has also invited Court's attention to the request made by the petitioner to the

disciplinary authority on April 11, 1996 for supply of documents for his defence. The request has been turned down on a stock plea of document being not relevant. The concerned authority ought to have enlisted the grounds clearly indicating as to how the documents demanded, were considered to be irrelevant by the concerned authority. Miss Thula has also contended that nowhere it is stated that the decision for non-supply of documents either taken by the authority or at the end of the Inquiry Officer. Miss Thula, has submitted that the appellate authority has though recorded contentions of the petitioner appearant but has not dealt with them as could be seen from the text of the orders impugned in this petition. In view of this it is submitted that the petition deserves to be allowed and the orders impugned deserve to be quashed and set aside.

Shri Patel, learned Counsel for the Corporation has resisted this petition and submitted that the stoppage of five increments

being minor penalty as per the relevant rules. Keeping in mind the conduct, by no stretch of imagination it can be said that the penalty is disproportionate or excessive. The Inquiry Officer has acted very fairly and has complied with the principle of natural justice and therefore on this ground the petition deserves to be dismissed. Shri Patel has also submitted that the Inquiry Officer has acted very fairly and in many charges he has held the same to be not proved and in one charge it is held that it is partly proved; whereas in other charges the Inquiry Officer has held them to be proved. This entire exercise was in due compliance of principle of natural justice and the charges proved do go to show that they were serious enough to warrant appropriate penalty. Shri Patel has submitted that the disciplinary authority has passed the reasoned order as to why the petitioner deserves to be punished for the misconduct said to have been proved against him during the inquiry. Shri Patel has submitted

that the documents demanded were not given as they were found to be not relevant. Shri Patel has produced the Rojkam of April 11, 1996 which indicate that the documents demanded were denied, as being not relevant. Shri Patel has submitted that so far as contentions with regard to refusal of permitting outsider to be a defence assistance, the relevant Rule 9 (5) (c) stipulates that the disciplinary authority is competent to refuse permission to engage an outsider and therefore on this count also it cannot be said that inquiry has vitiated in any way, as suggested by the Counsel for the petitioner. Shri Patel has further submitted that the impugned order is well reasoned order and therefore the petition deserves to be dismissed.

The Court has perused the record. The charges levelled against the petitioner go to show that they warranted full fledged inquiry. The nature of penalties have been prescribed under Rule 6 of

the Disciplinary Rules wherein withholding of increment of promotion with or without cumulative effect is termed to be minor penalty. However, Rule-8 of the Disciplinary Rules described the procedure for imposition of minor penalty wherein it is prescribed that the employee delinquent have to be informed about the proposal to take action against him and of the imputation of misconduct or misbehaviour and his representation is to be considered thereon and or holding inquiry in the manner laid down in sub-rule 3 to 22 of Rule 9, if necessary. In the instant case, the concerned authorities chose to conduct departmental inquiry keeping the seriousness of the charges in mind and therefore now it is required to be examined as to whether the said inquiry proceedings were in consonance with the principle of natural justice and whether the delinquent petitioner was afforded all the reasonable opportunity for meeting with the charges defending his case before the concerned authority.

The inquiry officer has after inquiry hold that the charge Nos.1, 5, 5.2, 5.3, 5.6 and 5.7 not proved; whereas, charge Nos.2, 3, 3.2, 5.4 and 5.8 proved and submitted his report to the disciplinary authority. It is admitted fact by both the sides that delinquent-petitioner did request for permitting one Shri D.A.Hindocha, Deputy Mamlatdar to be his defence assistant, which request was turned down, as he was an outsider and not an employee of the Corporation. The delinquent addressed the communication to the Inquiry Officer on April 3, 1996, indicating that he requested on March 29, 1997 for permitting him to take assistance of one Shri D.A. Hindocha, Deputy Mamlatdar in Jamnagar District with Shri Hindocha's consent letter to act as defence assistant which was turned down by the concerned authorities on a ground that defence assistant is only one of the employees of the Corporation and outsider were not permitted as per some circular. The delinquent inquired in the regional office of

the Corporation on April 3, 1996, but he was informed that there is no such circular and in view of this he repeated his request for seeking assistance from the outsider. The delinquent also made specific request on April 11, 1996 requesting for documents enlisted therein. This letter was addressed to the disciplinary authority. However, the request appears to have turned down right on April 11, 1996 as it appears from the relevant copy of Rojkam. The copy of the Rojkam of the concerned date is produced by Mr.Patel on record which does not disclose anywhere as to whether the decision of the turning down the request was taken either by the disciplinary authority or it was a decision of the Inquiry Officer himself, but reading of the Rojkam go to show that it was the decision of the Inquiry Officer as it appears to have been turned down right on the date itself. The delinquent petitioner has taken this ground categorically in his memorandum of appeal, as could be seen from the order of appellate authority who has enlisted

the contentions of the delinquent wherein this is one of the contentions. The appellate authority has in his order not dealt with all the contentions which is recorded by the petitioner and passed an order without dealing with the contentions of the delinquent in the appeal.

The appeal against the order of imposition of penalty lies to the appropriate appellate authority under the disciplinary rules and therefore appellate authority was under duty to deal with each and every contentions of the delinquent. As could be seen from the order of the appellate authority produced at page 147, the appellate authority has recorded the contentions of the petitioner-delinquent in internal page 3 of the order, but has not dealt with them by recording his conclusion as could be seen from short discussion recorded by the appellate authority on internal page 6 of his order. The order of appellate authority and especially reasonings starts only on internal page 6 of the order and ends on page 8. The order of appellate

authority therefore is not sustainable in the eye of law, as the appeal is provided under very disciplinary rules and appellate authority was therefore duty bound to deal with each and every contentions of the appellant. The contention of the delinquent taken up in the appeal as recorded by the appellate authority were very relevant and germane, as the violation of principle of natural justice was pleaded on account of non-supply of documents to the delinquent and not affording opportunity to have one Shri Hindocha as defence assistance. The Rule pressed into service for deny an outsider as defence assistance cannot be said to be of much avail to the respondents, inasmuch as, plain reading of the said Rule being Rule No.9(5) (c) which is set out here under:

> *"9.(5)(c) The Disciplinary Authority nominate any person hereinafter referred to as the Presenting Officer to present the case in support of the charge before itself if it is to inquire into the charge or before the Inquiry Authority.*
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> *The employee may present his case with the assistance of any employee approved by*

the Disciplinary Authority but may not engage a legal practitioner for the purpose unless the person approved by the Disciplinary Authority as aforesaid is a legal practitioner or unless the Disciplinary Authority having regard to the circumstances of the case so permits."

The bar is to engage practitioner without approval of the disciplinary authority but this Rule do not show that a non-practitioner or any other government servant not an employee of the Corporation permitted to act as defence assistance, nor has the authority quoted any circular and / or resolution made subsequent to the Rules indicating that an outsider were not permitted. This issue has also not been dealt with by the appellate authority and therefore to that extent the order of appellate authority has become unsustainable.

The respondents in the affidavit-in-reply also have not been in a position to indicate that the documents demanded were not relevant for the purposes of the disciplinary proceedings, nor

have they produced any circular and / or other resolution indicating that the outsider are not permitted at all to act as defence assistance.

As against this the charge levelled against the petitioner and proved do not indicate that they were in any way disproportionate. However, that violation of principle of natural justice being pressed into service on behalf of the petitioner, the appellate authority was duty bound to deal with the same on perusal of record and material. Therefore, it would be most appropriate in the interest of justice to remand the matter to the appellate authority to pass a fresh order keeping the contentions of the petitioner recorded in his order. The matter is that of year 1998, the appellate authority is expected to decide the issue, as soon as possible, preferably within three months from the receipt of writ of this Court.

In the result, the order of appellate authority passed in appeal No.97/14059 dated

March 5, 1998 produced at Annexure - H is hereby quashed and set aside and the appellate authority is hereby directed to reconsider the appeal of the petitioner in light of the record and proceedings available with them and pass appropriate reasoned order. The petition is, therefore, partly allowed. Rule is made absolute to the aforesaid extent.

(S.R.BRAHMBHATT, J.)

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